

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>LADERRICK D. SMITH,</b>	)	
<b>ID # 1258111,</b>	)	
<b>Petitioner,</b>	)	
<b>vs.</b>	)	<b>No. 3:09-CV-662-G (BH)</b>
	)	
<b>NATHANIEL QUARTERMAN, Director,</b>	)	<b>Referred to U.S. Magistrate Judge</b>
<b>Texas Department of Criminal</b>	)	
<b>Justice, Correctional Institutions Division,</b>	)	
<b>Respondent.</b>	)	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an Order of the Court, this case has been referred to the United States Magistrate Judge for findings, conclusions, and recommendation.

**I. BACKGROUND**

Petitioner is a state inmate currently or previously incarcerated in the Texas Department of Criminal Justice - Correctional Institutions Division (TDCJ-CID). On January 7, 2009, the Court received a petition for habeas corpus relief on a state form. On April 10, 2009, the Court issued a notice of deficiency and order advising petitioner that his motion was on the wrong form and was not accompanied by a filing fee or an application for leave to proceed *in forma pauperis* with the required certificate of trust account. He was granted thirty days to submit the appropriate form and either pay the \$5 filing fee or to file an application for leave to proceed *in forma pauperis* to the extent that he intended to pursue a federal habeas action. The order expressly warned him that the failure to do so would result in a recommendation that his petition be dismissed for failure to prosecute. To date, petitioner has neither submitted the appropriate form, paid the fee nor filed an application for leave to proceed *in forma pauperis*.

## **I. INVOLUNTARY DISMISSAL**

Rule 41(b) of the Federal Rules of Civil Procedure permits a court to dismiss *sua sponte* an action for failure to prosecute. This authority flows from a court's inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962); *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (habeas action). Petitioner has failed to comply with the order that he submit the appropriate form and either pay the filing fee or submit an application to proceed *in forma pauperis* within twenty days. He has given no indication that he intends to proceed with this action. Accordingly, the Court should dismiss his petition for want of prosecution.

## **II. RECOMMENDATION**

Petitioner's writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 should be dismissed without prejudice for want of prosecution pursuant to Fed. R. Civ. P. 41(b).

**SIGNED this 15th day of May, 2009.**

  
IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996)(*en banc*).

  
IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE